

CHAPTER ONE – OFFICE OF THE CHILD ADVOCATE

Overview and History

The Office of the Child Advocate (“OCA” or the “Office”) was statutorily created on June 30, 1999. The Office has many statutory duties. Those include:

1. Staffing the Child Protection Accountability Commission;
2. Serving on various committees, commissions, task forces and workgroups representing the rights of children;
3. Advocating for changes in policies, procedures and statutes;
4. Organizing and participating in multi-disciplinary trainings; and
5. Designing and implementing a legal representation program for abused, neglected and dependent children.

OCA Attorneys and Volunteers

OCA has five full-time attorneys including the Child Advocate as well as a part-time Pro Bono Coordinator. In addition, OCA has a full-time Office Manager and Program Administrator as well as four part-time Family Crisis Therapists (social workers) and countless volunteer interns and law clerks.

OCA also has a volunteer attorney pool of more than 400 lawyers. Please review the OCA Annual Report and the Pro Bono Honor Roll to see the diverse pool of attorney volunteers. Out of the volunteer pool, approximately 50 are family law practitioners. The attorneys are partners and associates alike, and practice in all fields, including corporate litigation, patents, intellectual property, real estate,

in-house corporate counsel, criminal, medical malpractice and personal injury. Several retired and inactive attorneys also volunteer, some of which are stay-at-home parents.

Procedures for Referrals and Appointments

How does OCA find out about children who need an advocate?

There are two primary avenues which lead to the appointment of an attorney guardian *ad litem* for a child. The first avenue is referrals. OCA regularly receives referrals from biological parents, foster parents, relatives, schools, counselors and psychologists, medical professionals, law enforcement, the Department of Justice, the Children’s Department and the Court system. These referrals typically indicate that no one is looking out for an abused, neglected or dependent child’s best interests, and that the child or children would benefit from their own independent legal representation of his or her best interests. If a person calls to report child abuse or neglect, they are directed to the Child Abuse Hotline at 1-800-292-9582. **OCA does NOT investigate child abuse and neglect – the Division of Family Services does.**

The second avenue is a Court order. In compliance with 13 Del. C. § 701(c), the Court is required to appoint a guardian *ad litem* (“GAL”) through OCA or CASA for each child who enters the custody of the Division of Family Services. Routinely, the Court faxes an order as soon as a child enters care, requiring OCA and/or CASA to appoint a GAL for the child. The Court uses the following phrases in its orders requiring appointment of an attorney GAL through OCA:

1. An attorney guardian *ad litem* shall be appointed to represent [the child].
2. An attorney guardian *ad litem* or a CASA shall be appointed to represent [the child].
3. The Court requests that an attorney guardian *ad litem* from OCA be appointed to represent [the child].
4. A CASA or attorney guardian *ad litem* shall be appointed to represent the best interests of [the child].

How does OCA decide whether or not to represent a child? What records are considered and how long does it take?

When OCA receives a **referral** on a child (as opposed to a Court order requiring appointment), OCA will review records from the Delaware Children's Department. If any history with the Department exists, when OCA asks to review record, the Children's Department will respond within ten working days pending approval by their attorney. Upon notification from the Children's Department, OCA schedules the review within ten working days. During this four to six week process, OCA may also review the Family Court record. After all compiled records are reviewed, the Program Administrator evaluates the risk factors in the case. These risk factors include but are not limited to the following: history of abuse/neglect/dependency, domestic violence in the home, drug/alcohol addictions, and mental health history. The Child Advocate then makes the final decision, based upon a recommendation, as to whether or not an attorney will be appointed for the child. The Children's Department worker(s) and the referent are alerted as to the outcome of the OCA review. **All referral sources and OCA records are confidential pursuant to 29 Del. C. § 9006A.**

When OCA is **Court ordered** to represent a child, OCA does not review the Delaware Children's Department records prior to appointing an attorney. Instead, it requests that the records be immediately prepared by the different divisions for copying. OCA will then go to the physical Division location and retrieve the file. The copy of the file is then forwarded to the attorney for the child. In cases with long histories and/or which raise policy concerns, OCA will also retain a copy of the DFS record for internal use. If there are available attorneys through OCA, a Court-ordered appointment may only take a week or two. If there are no available attorneys, the child is placed on a waiting list until an attorney can be recruited.

How does an order of appointment occur?

For OCA referrals in which the child is in the custody of the Division of Family Services or in Departmental custody, or for Court ordered cases, OCA simply files a form of order with the Court indicating the attorney who will be representing the child's best interests. Prior to this order being filed, the OCA Pro Bono Coordinator contacts available attorney volunteers listed in the OCA database. If the attorney is able to handle the case a conflicts check is done prior to preparation of the form of Order

For OCA referrals where the child or children are not in the custody of the Division of Family Services/Children's Department, OCA, as a courtesy to the parties, files a motion with the Court requesting appointment of the attorney GAL. OCA is not required to do so. 29 Del. C. § 9007A(a)(2) states that if OCA "determines that a child needs guardian ad litem representation, the Court shall sign an order appointing." The Family Court

has also interpreted this provision in the same light. *See Bennett vs. Bennett*, File No. CS91-4334, Henriksen, J. (Jan. 2, 2002).

What happens once the order of appointment is signed?

Once the Court signs the form of Order appointing the attorney GAL, OCA will provide the attorney with a copy of any Children's Department files and information on the location of the child or children. If the child is in the custody of the Division of Family Services, the DFS worker's name and contact information is also provided to the attorney. OCA will then provide supportive services as necessary.

If you have been asked to take a case and there is a hearing scheduled, please attend the hearing regardless of whether or not you have received a signed order of appointment. The Court will often sign the order of appointment at that hearing, and provide you a copy at that time.

If more than a week passes without receiving a signed order, please contact OCA so that OCA can follow up with the Court.

What if the child does not get an attorney?

For non-DFS cases, OCA often will close a case if risk factors are very low, if there is no pending petition in Court, or if the child already has a CASA. If there are child protection system concerns, OCA will track these issues and has often brought safety issues/concerns to the Delaware Children's Department. For children in DFS custody, no file is ever closed while the child is in DFS custody. Instead,

efforts are continually made by OCA to locate an attorney for the child.

Please see our website at <http://courts.delaware.gov/childadvocate> for more information.